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IN THE

Supreme Court of the United States

No. 128 ——— Term, 1954

PROCTOR ELECTRIC CORPORATION,
Petitioner

v.

MASLO MANUFACTURING CORPORATION,
Respondent

Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania and Brief in Support Thereof

IRA JEWELL WILLIAMS,
THOMAS RAEBURN WHITE,
1900 Land Title Bldg.,
Philadelphia 10, Pa.
Counsel for Petitioner.

Of Counsel
WILLIAM H. PEACE, II

THE LEGAL INTELLIGENCER, 10 S. 37TH ST., PHILA. 4

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IN THE
SUPREME COURT OF THE UNITED STATES

No. Term, 1954

PROCTOR ELECTRIC COMPANY, *Petitioner*

v.

MASLO MANUFACTURING COMPANY, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above entitled case on March 22, 1954. A petition for reargument was filed on March 31, 1954 and was denied on April 12, 1954.

OPINIONS BELOW

The memorandum of the trial court (R. 77a), Court of Common Pleas No. 3 in and for the County of Philadelphia, denying petitioner's motion for judgment on the pleadings, is unreported. The opinion of that court overruling appellant's motion for judgment n.o.v. (R. 259a) is unreported. The per curiam opinion of the Supreme Court of Pennsylvania (App. p. 1a) of March 22, 1954 is as yet unreported.

JURISDICTION

The jurisdiction of this court is invoked under 28 U. S. C. §1257(3), 62 Stat. 929. The federal question was raised in the trial court in the pleading stage by an amended answer in the form of Additional New Matter (R. 48a). It was made the basis for a motion for judgment for petitioner on the pleadings (R. 76a), which motion was overruled in a memorandum opinion to the effect that the pleadings raised mixed questions of law and fact which could only be resolved at trial (R. 77a). The federal question was again raised at the trial (R. 205a), petitioner's pleadings containing excerpts from the Second War Powers Act were offered in evidence, and an appropriate point for charge presented and affirmed by the trial judge (R. 248a) (App. 8a). The case was permitted to go to the jury, whose verdict for the plaintiff was sustained in an opinion refusing judgment n.o.v. which ruled adversely on the federal question. (R. 259a, et seq. See particularly 266a-268a). The federal question was again raised in the Statement of Question Involved and in the printed brief and oral argument in the Supreme Court of Pennsylvania and in the petition for reargument (App. 9a) and memorandum filed sur said petition (App. 17a). The Supreme Court affirmed per curiam on the opinion of the court below (App. 1a).

QUESTION PRESENTED

War Power directives forbade any person to manufacture electric irons except upon quarterly allocations (no carry over). Petitioner's (applicable current) allocations were 19,450 for the last quarter of 1944 and 19,189,

23,627 and 36,800 for the first, second and third quarters respectively of 1945, no carry over. In 1950 respondent sued petitioner on an alleged oral promise of November 14, 1944 to furnish to respondent to be copper-plated and polished for petitioner, for an extended period beginning in the first quarter of 1945, sole plates (the sole plate is the ironing part itself before adding a cover, a handle and electric appurtenances) at the rate of 76,000 per quarter, or some three times petitioner's current allocations in the quarter of the "promise" and in the first three quarters of the performance. Was not such promise unenforceable?

STATUTE INVOLVED

The statute involved is the Second War Powers Act of March 27, 1942, 50 U. S. C. App. §631 et seq., 56 Stat. 176, as amended, the pertinent provisions of which and regulations and directives thereunder are printed in Appendix, infra, at page 3a. The President was empowered to create priorities in and make allocations of materials (50 U. S. C. App. §633 2(a) (2) (C)). By Executive Order No. 9024 such powers were transferred to the Chairman of the War Production Board. The manufacture of electric irons was stopped and resumed in 1944 on quarterly allocations under a directive, "No person shall make any electric irons except . . . specifically authorized . . . on Form CMPL-150-b" (9 Fed. Reg. 10169 R. 65a). The Second War Powers Act, Section 2(a) (7), also forbade damages "for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation or order issued thereunder. . . ."

STATEMENT

Proctor Electric Company, petitioner herein and defendant below, is a manufacturer whose normal products include electric flat irons. By directives under the Second War Powers Act, all such manufacturing had been stopped.

In 1944 a limited resumption was permitted under a directive "No person shall make any electric irons except . . . as specifically authorized . . . on form CMPL-150-b". Petitioner's allocation for the last quarter of 1944 under such directive was 19,450 irons with no carry over (R. 210a-211a). No allocation for the first quarter of 1945 was made until February 1, 1945 when petitioner was given a quota of 4,734 (R. 213a), later increased to 19,819 (R. 216a). The original allocation for the second quarter of 1945, issued March 27, 1945, was 29,580 (R. 216a), later increased to 36,373 (R. 216a) and subsequently reduced to 23,627 (R. 217a). Its allocation for the third quarter was 36,800 (R. 217a).

Respondent brought suit against petitioner in 1950 averring breach of a promise by petitioner (which promise petitioner denies) made on or about November 10, 1944, to furnish respondent sole plates (the sole plate is the ironing part itself before adding a cover, a handle, and electrical appurtenances) in quantities of 1,000 a day, six days a week, beginning January 15, 1945 and continuing for the period of the war and one year thereafter. Those figures equal 76,000 per quarter. At the time the promise was allegedly made, manufacturing was forbidden except upon allocation; and petitioner's then current allocation for the last quarter of 1944 was 19,450 irons and the allocations later issued and applicable for the first three quarters of performance were 19,819, 23,627 and 36,800. Respondent had no right or au-

thority to do this plating and polishing except through and for petitioner.

Among other defenses, petitioner pleaded the applicable provisions of the Second War Powers Act, the directives, and allocations thereunder, and the provision forbidding damages "for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation or order issued thereunder . . ."

The trial judge affirmed petitioner's Point No. 11:

> "Point No. 11—a contract in violation of law or with the purpose or effect of enabling the violation of law is illegal and unenforceable. The test is as to the legality at the time of the entering into of the alleged contract. On November 10, 1944, the date of the alleged agreement in suit, the nation was at war. The production of articles including irons maintaining essential materials, was controlled. The extent of the manufacture of irons was limited. It was illegal to manufacture irons except to the extent permitted by orders issued by the War Production Board. Neither the Plaintiff nor Defendant could engage in the production of irons except as permitted by law. Neither the Plaintiff nor Defendant had lawful authority on November 10, 1944, or at any time during the first nine months of 1945, to manufacture a thousand or 750 irons per day, six or five days a week. If you find that no such lawful authority existed, the alleged contract in its entirety was illegal and unenforceable and your verdict must be for the Defendant . That point is affirmed and an exception granted to the Plaintiff" (R. 248a).

Yet the trial court permitted a verdict for respondent, denied a motion for petitioner for judgment n.o.v. and entered judgment on the verdict. On appeal, the Supreme Court of Pennsylvania affirmed the action of the trial court in a brief per curiam opinion adopting the opinion of the trial court (App. p. 1a). A petition for reargument was subsequently filed and denied.

SPECIFICATIONS OF ERRORS TO BE URGED

The Supreme Court of Pennsylvania erred:

1. In holding enforceable an alleged promise forbidden by applicable directives and allocations under the Second War Powers Act both at the time of promise and performance.

2. In holding that even if the contract were illegal respondent could recover thereon under general principles of law enunciated in Section 599(a) and (b) of the Restatement of Contracts, and in spite of the provision of Section 2(a)(7) of the Second War Powers Act that "No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection(a) or any rule, regulation or order issued thereunder . . . "

3. In affirming the order of the trial court.

REASONS FOR GRANTING THE WRIT

1. The judgment of the state court denied effect to the purpose and intent of the Second War Powers Act to

further the war effort by controlling and allocating critical war materials, copper, steel and aluminum, and forbidding the manufacture of civilian goods.

2. The judgment below awarded damages for non-performance when performance would have been in contravention of the Second War Powers Act and directives thereunder. Such damages are forbidden by that Act.

3. The supreme law of the land in this sphere of paramount importance should be uniform and uniformly administered in all courts, federal and state.

4. When a suitor appears seeking profits through an illicit promise of disobedience to war directives the question presented becomes "one which the court itself was bound to raise in the interest of the due administration of justice. The court will not listen to claims founded upon services rendered in violation of common decency, public morality, or the law." *Oscanyan v. Arms Co.*, 103 U. S. 261, 267 (1880).

5. In view of the ever-continuing pressure for civilian goods, the national policy of the conservation of critical war materials and their dedication to essential war production should be enforced as against any tendency to limit or evade.

Conclusion

The judgment below was for damages for non-performance of an oral promise relating to the manufacture during wartime of civilian goods containing critical war materials, which materials national policy had dedicated to be conserved for essential war production. War controls forbade manufacturing except as permitted by quarterly

allocations made quarter by quarter, no carry over. The oral promise alleged was for some three times the then applicable allocations. The promise was held legal and enforceable whether legal or not because (in effect) of a "minor" character. That decision may prove akin to a false beacon on a dangerous coast. This petition should be granted.

Respectfully submitted,

IRA JEWELL WILLIAMS,
THOMAS RAEBURN WHITE,
Counsel for Petitioner.

WILLIAM H. PEACE, II,
Of Counsel.

Brief in Support of the Petition

ARGUMENT IN OUTLINE

1. The trial judge affirmed a point that neither the plaintiff nor defendant had lawful authority to manufacture the promised quantity on November 10, 1944 or at any time during the first nine months of 1945 (R. 248a), yet refused a request for an instructed verdict (R. 256a). The conflict between the allocations and the promised quantities is head on. "No person shall make any electric irons" except as per quarterly allocations (R. 65a). The allocations were about one-third of the "promised" quantities Exh. "T-W" (R. 72a). The promise was entire, not severable. Damages were permitted for non-performance during the first three quarters of 1945. There was no denial of the facts, no meeting of the issue of the conflict itself. The result defeats the plan to control the use of critical materials in wartime. The war plan was an organic whole. The "no manufacture" mandate was in effect at the time of both promise and performance. No promise is enforceable which requires that which is forbidden. This statute forbids damages directly or indirectly resulting from obedience thereto. Respondent's only right to manufacture was in virtue of petitioner's right. The conclusion below that the promise was lawful finds no sound support anywhere. The issue of the conflict between the allocations and the promised amount was not met below. It was not a "service" contract as mistakenly asserted by the trial judge with no supporting facts or reason. It was manufacturing work of copper-plating and polishing thousands of new iron bodies, not repairing old irons. There was no violation of law except the asserted 1,000 a day for a year after the war's end. This as-

serted promise was attributed to one Conway not then in petitioner's employ but merely requested to seek out a shop willing to do plating and polishing and not known to petitioner's management until five years later when suit was brought. The promise itself was extraordinary for reasons other than its violation of law.

2. The opinion below mistakenly invokes certain generalities of the Restatement of Contracts, allowing recovery (a) where there are facts of which one party is justifiably ignorant and the other is not, or (b) statutory or executive regulations of a minor character relating to a particular business which are unknown to one party who is justified in assuming special knowledge by the other party of the requirements of the law. There is no factual basis for the application of these sections. Maslo's own testimony shows general knowledge of wartime controls (R., p. 140a-142a). The regulation was not of a minor character, as the opinion below admits (R. 267a). The control of critical materials was *general*. The opinion below ignores the applicable provisions of the Restatement of Contracts where the action is opposed to public policy or transgresses statutory prohibitions (2 Restatement, Section 598, Page 1110). The court below uses reasoning which would strike down all defense controls, and volunteers rhetorical questions which are irrelevant as against the controlling fact of the actual allocations. The Second War Powers Act *inter alia* forbids damages for any default under any contract resulting directly or indirectly from compliance with subsection (a) or any regulation thereunder, notwithstanding it "shall thereafter be declared by judicial or other competent authority to be invalid." That should preclude recovery here

for damages for breach of a promise or "contract", non-performance of which was in compliance with that Act.

3. The federal law is that the court is bound to raise the question of illegality even though not pleaded. That law is supreme and should be followed in all courts, state as well as federal. Uniformity is essential. Judicial notice should be taken of the war and war controls, the facts inquired into and ascertained, and the supreme law and policy applied that the court will not listen to claims founded in violation of common decency, public morality or the law; thereby securing obedience and respect and preventing evasion. Here the true facts and law appear by Petitioner's point No. 11, affirmed by the trial judge (R. 248a), which stated inter alia. "Neither the Plaintiff nor Defendant had lawful authority on November 10, 1944, or at any time during the first nine months of 1945 to manufacture a thousand or 750 irons per day, six or five days a week." The trial judge when writing the opinion below ignored that point and the facts stated therein. That point, together with the request for binding instructions (R. 231a, 257a), required a directed verdict. It was the judge's duty *sua sponte* so to rule. ". . . It was one which the court itself was bound to raise. . . . The court will not listen to claims founded . . . in violation of common decency, public morality or the law." *(Oscanyan v. Arms Co.*, 103 U. S. 261, 267 (1880)) cited and followed in the Fourth Circuit (116 F. 2d 440, 441) and the principle aptly applied in the Third Circuit, (107 F. 2d 712, CCA 3). The promise was entire, not severable, and the suitor persisted in claiming damages for the whole. It is "tainted with illegality". The subject matter is in a sphere of paramount importance, the dedication of critical materials to

war purposes and preventing their use for civilian goods, and preventing evasion of that policy.

Amplifying the foregoing, the argument is presented more in detail under three headings:

1. WAS THE "PROMISE" SUED ON IN CONFLICT WITH THE WAR POWERS ACT, DIRECTIVES, AND ALLOCATIONS?
2. MAY THE PROMISEE SUE FOR NON-COMPLIANCE?
3. WHAT IS THE FEDERAL LAW?

Of these in their order:

1. WAS THE "PROMISE" SUED ON IN CONFLICT WITH THE WAR POWERS ACT, DIRECTIVES AND ALLOCATIONS?

The trial judge affirmed plaintiff's point No. 11 containing the following: (for the entire point see pp. 11a, 22 infra)

> ". . . On November 10, 1944, the date of the alleged agreement in suit, the nation was at war. The production of articles including irons containing essential materials, was controlled. The extent of the manufacture of irons was limited. It was illegal to manufacture irons except to the extent permitted by orders issued by the War Production Board. Neither the Plaintiff nor Defendant could engage in the production of irons except as permitted by law. Neither the Plaintiff nor Defendant had lawful authority on November 10, 1944, or at any time during the first nine months of 1945 to manufacture a thousand or 750 irons per day, six or five days a week. . . ."

The conflict appears from the following parallel:

The Act and allocations:	*The alleged promise*
"No person shall make any electric irons . . ." except as per quarterly allocations.* (R. 65a)	A single oral promise, unqualified, November 10, 1944, to furnish daily to promisee, 1,000 iron sole plates to be copper-plated and polished beginning early in 1945 (first quarter) till one year after the war's end. This would have amounted to about 3 times the quarterly allocations current at the time of promise and performance. (R. 211a et seq., Exhibits "T"-"W")
In 1944 (last quarter) Proctor may make only 19,450. (R. 211a, 212a)	
In 1945:	
first quarter, 19,819	
Second quarter, 23,627	
third quarter, 36,800	
(R. 213a et seq. 72a, Exhibits "T"-"W")	

The conflict is head on. The law said: "No electric irons except. . . ." The command at the time of the promise was "only 19,450". The commands in the first three quarters of performance were "only 19,819", "only 23,627", "only 36,800". The promise was entire, not severable. Yet the Courts below permitted damages for breach of an alleged promise not permissible at the time of making or per-

* War Production Board Order L-65-a (Exhibit "R") (R. 65a) as amended August 19, 1944, is printed in the Federal Register, 9 Fed. Reg. 10169. The official history of this particular phase of Second War controls was written as early as 1946 as appears by a report entitled "Resumption of Production of Domestic Electric Flat Irons, April 1943 to August 1944", a copy of which is on file in the Library of the Director of Information in the Executive Office of the President, Office of Defense Mobilization, the Library reference being as follows: HD 3616. U52A3 No. 6 1946, c. 5.

formance, and for non-performance during the entire period.

Against this conflict there is the assertion that the contract was legal when made; but no denial of the facts or meeting of the issue of the conflict itself. The law said, thus far and no further; the promise was to go three times as far.

What was allegedly promised was exactly what the plan of control was trying to prevent, namely the use of critical materials for civilian purposes, diverting such materials from war uses.

The war plan was an organic whole, production forbidden except as authorized. The "no manufacture" command was in effect both at the time of promise and of performance. The corollary is that no promise can be enforced if it requires what is forbidden. In a statute whose purpose is to bring about an all-important effect it is implicit that a promise which requires disobedience is unenforceable. A clause expressly forbidding promises or undertakings in conflict with the statute would be superogatory (yet ex majore cautela there was also included an express provision against the recovery of damages (50 U. S. C., App. §633 2(a) (7)).

Respondent had no right to do this work or to promise to do this work except in virtue of the petitioner's right, as a basic step, in the manufacture of the electric irons petitioner was permitted to make. It would have been a manifest evasion to plan or promise to build up a large excess stockpile of essential parts containing critical war materials.

The conclusion that the promise was lawful finds no sound support in the opinions or briefs below. Congress

had the power, dealt with the subject matter, put into effect a plan, and occupied that territory. The allocations were by quarters, with no carry-over. If the allocations for the first, second and third quarters of 1945 had been in effect on November 10, 1944, if those allocations had been either 19,450 irons (as then in effect) or 19,450, or 19,819, or 23,627, or 36,800 irons (the actual later allocations), there can be no doubt that a promise of 76,000 irons per quarter would have been unlawful. The control must be considered and given effect to as a whole. The plan forbade any one to make electric irons except as permitted, and the promise sued on, if made, would have been wholly illegal.

The reasons given by the trial judge do not meet the issue. That issue is that Proctor lacked authority to promise to make electric irons at the stated rate of 76,000 per quarter. The opinion raises a false issue by incorrectly stating that Proctor had argued that not until January 20, 1945 was Proctor authorized to make any electric irons at all (R. 266a). This is a palpable misunderstanding. Proctor offered in evidence and relied upon and now relies upon Regulation L-65-a of August 19, 1944 (R. 65a, 206a) (9 Fed. Reg. 10109) and CMPL-150-b (R. 62a, Ex.), the original directive authorizing the manufacture of 34,450 irons during the last quarter of 1944 [subsequently reduced to 19,450 irons (R. 64a)). Proctor's case was and is that the production of electric irons having been stopped, there was a partial resumption upon quarterly allocations. The trial judge overlooked that the fact correctly stated by Proctor was that it had no authority to make irons *in 1945* until February 1, 1945, the date of the first allocation (R. 72a).

Even such a manifestly erroneous argument could not validate the promise. The test is the fact, and the fact was

that the promise was in conflict with the law at the time of the making of the promise and at the time of the performance. This is the rub of the case.

After stating that "this contract was legal when made" the trial judge interjected, against the fact (R. 267a), "that it was a service contract not a manufacturing contract." Servicing, of course, means the care and repair of already manufactured articles — keeping them running, making them run, by individual successive attention to each machine. Here the work was done en masse on thousands of sole plates (the irons without handles, covers or electrical appurtenances) of copper-plating and polishing the body of the iron.

Another attempted makeweight of the trial judge (R. 267a) was:

> "If as defendant alleges the contract was illegal when made, then it was not obliged to pay for any of the work porformed. Furthermore, it own actions during this period indicated no awareness on its part of any illegality."

Proctor management did not know of the respondent's *claim* of quantities which would constitute illegality until five years later when suit was brought. There was no violation of law except the asserted 1,000 a day for a year after the war's end. As appears by the Statement of the Question Involved below that promise was repudiated by Proctor management because attributed to one not an employee, not having either express or implied power, a promise never brought to the knowledge of any official or person having contractual power, in conflict with the written orders and billings, not supported by any writings and denied by the alleged promissor.

The Statement of Question Involved in the Supreme Court of Pennsylvania was as follows:

> "1. Second War Powers Act as the supreme law of the land—war time allocations—agency—alleged oral promise of unusual nature followed by written orders—res judicata.
>
> "Will a verdict for damages be sustained based on an oral promise alleged to have been made to appellee Maslo, by a traveling salesman not in appellant Proctor's employ, when acting solely to seek a shop willing to finish sole-plates for flat-irons, which promise, to furnish sole-plates to that shop for a year after war's end at the rate of some 76,000 each quarter, was made when Proctor's current quarterly allocations being still less and never exceeding 36,800, which (alleged) 'promise' was unknown to Proctor, was never acted upon, but the relation put into effect by written purchase orders for quantities not in accord with the 'promise', each of which orders was accepted, filled and billed by Maslo referring to same and without protest, and which sole-plates were to be finished on machines loaned by Proctor which machines were recovered later on, under a judgment in replevin?
>
> "Answer below, Yes."

2. MAY THE PROMISEE SUE FOR NON-COMPLIANCE?

The opinion below invokes, against the supreme law of the land, certain generalities of the Restatement of Contracts:

> "Even if this contract were illegal we think plaintiff could recover thereon. Plaintiff could base a recovery on either (a) or (b) of Section 559 (sic) of the Restatement of Contracts; (a) allows recovery where

there are facts of which one party is justifiably ignorant and the other party is not, or (b) statutory or executive regulations of a minor character relating to a particular business which are unknown to one party, who is justified in assuming special knowledge by the other party of the requirements of the law."

These sections are inapplicable from every point of view. "Facts of which one party is justifiably ignorant and the other is not, or (b) statutory or executive regulations of a *minor character relating to a particular business* which are known to one party who is justified in assuming such knowledge by the other party of the requirements of the law." (Emphasis supplied). The regulations were not of a "minor character relating to a particular business" but extended to all manufacture of civilian goods. There is no testimony either that plaintiff was ignorant that war material such as steel and copper was controlled and rationed or that plaintiff could be justifiably so ignorant. In fact, every one knew that there were controls, as Maslo's own testimony shows (R. pp. 140a-142a).

The applicable part of the Restatement of Contracts is the comment to Section 598 (2 *Restatement of Contracts*, Section 598, page 1110):

> '". . . The rule of public policy that forbids an action for damages for breach of such an agreement is not based on the impropriety of compelling the defendant to pay the damages. That in itself would generally be a desirable thing. When relief is denied it is because the plaintiff is a wrongdoer, and to such a person the law denies relief. Courts do not wish to aid a man who founds his cause of action upon his own immoral or illegal act. If from the plaintiff's own

statement or otherwise it appears that the bargain forming the basis of the action is opposed to public policy or transgresses statutory prohibitions, the courts ordinarily give him no assistance. The court's refusal is not for the sake of the defendant, but because it will not aid such a plaintiff". 2 Restatement of Contracts sec. 598, p. 1110.'

The attempt to apply (a) and (b) of the Restatement of Contracts to the Second War Powers Act and the directives thereunder should not weigh against the urgencies of a war.

The opinion below continues:

> *"Defendant rightly argues that one may not assume that the Second War Powers Act was a statute of minor character nor were the regulations thereunder.* However, the proper view of this situation must be cast against the era in which it transpired. *Plaintiff is charged with notice.* But cannot the court take judicial notice of the thousands of orders and regulations issued during the war years? The record itself and defendant's exhibits indicate the difficulties of keeping abreast of the conflicting orders and directives of the W. P. B." (Emphasis supplied.)

What possible relevance has the reference to the "thousands of orders and regulations issued during the war years"? When controls are exercised over vast areas of activities, what else can be expected? Why the impatience with what is inherent in the subject matter? As to the "conflicting orders and directives of the WPB", there were only some half-dozen decreasing or increasing allocations superseding prior allocations. These scarcely deserve to

be called "conflicting". And on this line of reasoning how sustain any defense controls? But there is no possible doubt about the allocations for the fourth quarter of 1944 or the first, second or third quarters of 1945.

"How would plaintiff ascertain what allotment was authorized Proctor?" (Opinion, R., p. 268a) By asking. "How would he know whether Proctor had applied for its allotment?" (R., p. 268a). If he had any doubt, by asking —but what a question by one engaged in war work or one wholly engaged in war work! "Could plaintiff be held responsible for knowledge of defendant's 1940 production?" Nobody has tried to hold plaintiff responsible. It has no bearing. *The controlling fact is the extent of the allocations actually made.*

". . . It is obvious that casting the issue in this context and against the above background, plaintiff was either justifiably ignorant of the exact facts or he was justified in relying on defendant's implicit representation that it had authority to make the irons contracted for. . . ." (Opinion, R., p. 268a) There was nothing to show Maslo did not know about controls or allocations or that he asked or didn't ask, so how infer that plaintiff was ignorant or justifiably ignorant? The conclusion is a complete non sequitur. The logic of the conclusion is that anyone would be justifiably ignorant of any directive in wartime. How could there be the "implicit representation that it had authority to make the irons contracted for" when Proctor management never knew what the alleged contract was? This part of the opinion would allow recovery upon one of two mutually incompatible hypotheses, each unsupported by fact.

The opinion ends by holding that the regulation dealing with the manufacture of the "lowly household flat-iron"

could well be considered "minor". (R., p. 268a) "Monny a mickle mak's a muckle" may well be considered a maxim both lowly and minor; but in war, as applied to *all* peacetime articles containing critical war materials, it embodies sound economics and wise war control.

The Second War Powers Act contains the following provision which has included in the Additional New Matter in petitioner's pleadings below. (R., pp. 48a, 50a)

> "No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid."

This alone should preclude recovery in this case.

In retrospect it seems to have been introduced out of an excess of caution to cover even the extreme case of something later adjudged invalid and to give protection meanwhile to conduct in consonance therewith. There has been and could be no ruling of invalidity by judicial or other competent authority. But the language is broad and covers this case. For here damages were recovered for a breach of a promise when the performance of that promise would have been a breach of the war controls.

3. What Is the Federal Law?

When a promise sued on invades territory or involves subject matter dedicated to the war effort, there should be uniformity of decision, under the principle laid down in

Oscanyan v. Arms Co., 103 U. S. 261, 267 (1880) which should mean:

(a) The duty of the court to raise the question of illegality

(b) To take judicial notice of and give primary consideration to the war and war controls, and when it appears that war controls apply,

(c) To ascertain the facts and apply the law that

(d) "The court will not listen to claims founded . . . in violation of common decency, public morality, or the law."

(e) That the supreme policy be so enforced as to secure obedience and respect and prevent evasion.

Here the facts as well as the true law appear by Proctor's point No. 11, excerpted from above and here given in full, as affirmed by the trial judge (R. 248a):

> "Point No. 11—a contract in violation of law or with the purpose or effect of enabling the violation of law is illegal and unenforceable. The test is as to the legality at the time of the entering into of the alleged contract. On November 10, 1944, the date of the alleged agreement in suit, the nation was at war. The production of articles including irons containing essential materials, was controlled. The extent of the manufacture of irons was limited. It was illegal to manufacture irons except to the extent permitted by orders issued by the War Production Board. Neither the plaintiff nor Defendant could engage in the production of irons except as permitted by law. Neither the Plaintiff nor Defendant had lawful authority on November 10, 1944, or at any time during the first nine

months of 1945 to manufacture a thousand or 750 irons per day, six or five days a week.* If you find that no such lawful authority existed, the alleged contract in its entirety was illegal and unenforceable and your verdict must be for the Defendant. That point is affirmed and an exception granted to the Plaintiff."

"It was illegal to manufacture irons except to the extent permitted by orders issued by the War Production Board. Neither the plaintiff nor defendant could engage in the production of irons except as permitted by law. Neither the plaintiff nor defendant had lawful authority on November 10, 1944, or at any time during the first nine months of 1945 to manufacture a thousand or 750 irons per day, six or five days a week." (R., p. 248a)

The trial judge who affirmed that point wrote the opinion below. That point was ignored. Those are the facts. They have not been met. Binding instructions were requested (R. 231a, 257a). The undisputed facts and the law as set forth in that point affirmed by him made it his duty so to rule.

". . . It was one which the court itself was bound to raise in the interest of the due administration of justice. The court will not listen to claims founded upon services rendered in violation of common decency, public morality or the law."

Oscanyan v. Arms Co., 103 U. S. 261, 267 (1880).

The Oscanyan case was cited and followed in 1940 by the Fourth Circuit, Parker, C. J., stating:

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* The point was drawn so as to cover an admission that the "promise" had been subsequently reduced to 750 a day, five days a week (R. 227a, 232a)

"A contract contrary to the public policy of the forum will not be enforced, particularly if that public policy is evidenced by a statute which the contract contravenes."

Lakos v. Saliaris, 116 F. 2d 440, 441, (CCA 4, 1940).

In *Fitzsimons v. Eagle Brewing Company*, 107 F. 2d 712 (CCA 3), the plaintiff sold malt syrup in large quantities to a wildcat brewery. Judge William H. Kirkpatrick raised the defense sua sponte, and was of course sustained by the Court of Appeals, although the Prohibition Amendment had been later repealed.

When the court, in order to prevent evasion and exact obedience to the law, raises the question of controlling public policy, such a promise as the one here would be bad in toto. The promise in form and substance was entire and not severable. The suitor made no effort to disavow, but persisted in claiming damages for the whole. The seriousness of the subject matter, the quality of the disrespect and disobedience forbid astuteness to work out any exculpatory doctrine. It is tainted with the illegality.

Bothwell v. Buckbee, Mears Co., 275 U. S. 274, 277 (1927).

The decision below is now the law in the 67 counties of Pennsylvania and binding upon the 167 judges of first instance in those courts, and may be followed by other jurisdictions, especially those in which the Statute of Frauds does not apply to agreements to be performed more than a year after date.

It relates to a federal sphere of paramount importance, the enforcement of the national policy in wartime as to critical materials.

The ruling below justifies and rewards conduct which should be condemned as injurious to the war effort.

Respectfuly submitted,

IRA JEWELL WILLIAMS
THOMAS RAEBURN WHITE
For Petitioner

WILLIAM H. PEACE, II,
Of Counsel

APPENDIX

OPINION OF SUPREME COURT OF PENNSYLVANIA

IN THE

SUPREME COURT OF PENNSYLVANIA

Eastern District

January Term, 1953 No. 257

MASLO MANUFACTURING CORPORATION

v.

PROCTOR ELECTRIC CORPORATION,

Appellant

Appeal from Judgment of Court of Common Pleas No. 3 (tried in Common Pleas No. 5) of Philadelphia County at No. 4230, March Term, 1950.

OPINION OF THE COURT

PER CURIAM:

In this action for damages for breach of an oral contract, the issues were largely factual. That there was an agreement between the parties for the finishing by the plaintiff company of sole plates of electric irons for the defendant is not open to question. What the agreement in its entirety was and what were the respective undertakings and engagements of the parties in detail constituted the matters in dispute. The issues were submitted to the jury in a clear, thorough and impartial charge

by the learned trial judge. The jury returned a verdict in favor of the plaintiff in the sum of $10,000 which was well within the proofs of damage. The defendant moved for a new trial and judgment n.o.v. but later expressly abandoned its motion for a new trial. The court en banc overruled the motion for judgment n.o.v. and entered judgment on the verdict for the plaintiff. On its appeal to this court, the defendant company urges the same questions of law as it raised in the court below which were fully discussed and correctly disposed of in the opinion for the court en banc, sur the defendant's motion for judgment n.o.v., whereon the judgment for the plaintiff is now

Affirmed.

50 U. S. C. App. §633 (a)(2)(C)

". . . Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

50 U. S. C. App. §633 2(a)(7)

"No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid."

L-65-a AS AMENDED AUGUST 19, 1944 (9 Fed. Reg. 10,169) Exhibit "R" (R. 65a)

TO: Domestic Appliance Section
NEMA War Projects
Bulletin No. 3675
(Supersedes #3008)
L-65-a AUG. 19, 1944 [As Amended] Corrected Copy

WAR PRODUCTION BOARD
(Corrected Copy)

Part 3291—CONSUMERS DURABLE GOODS

[Supplementary Limitation Order L-65-a as Amended August 19, 1944]

ELECTRIC IRONS

§3291.316 *Limitation Order* L-65-a—(a) *What this order does.* This order controls the manufacture and delivery of electric irons. It provides for the resumption of production of these items on a limited basis. Notwithstanding the provisions of Limitation Order L-65, no person shall manufacture any electric irons except under the terms of this order.

(b) *Definition.* For the purpose of this order: "Electric iron" means any portable iron designed primarily to be used in ironing or pressing wearing apparel and having a self-contained heating element in which heat is generated by the passage of electricity.

(c) *Production of electric irons.* (1) No person shall make any electric irons except in models and quantities specifically authorized by the War Production Board on

Form CMPL-150-B. Application should be made by filing Form WPB-3550.1 with the field office of the War Production Board for the district in which the plant where the irons are to be made is located.

(2) Each person who has a production quota assigned on Form CMPL-150-b may make in addition to that quota, electric irons in approved models to fill purchase orders or contracts calling for delivery to or for the account of the U. S. Army, Navy, Maritime Commission or the War Shipping Administration. Irons may not be made to fill even these orders by any person who has not been assigned a production quota.

(3) Manufacture of electric irons will be permitted only if labor is available and if such production can be made without interference with existing or potential war contracts. Wherever practical, each manufacturer will be permitted under paragraph (c) (1) to make his pro rata share of the total producton authorized, based on his production during 1940. However, to insure full production of approved requirements, the War Production Board may assign additional quotas to qualified manufacturers. In general, no single manufacturer will be authorized to produce more than one model of the automatic type and one model of the non-automatic type. Approval of models will be based largely on economy of production and the volume of production of the individual models by a manufacturer during 1940. The War Production Board will, from time to time or on request of any manufacturer, give notice to all manufacturers of the total production authorized and the percentage of his 1940 production authorized to each individual manufacturer.

(4) Manufacturers who made electric irons in 1940

and who are unable to produce because of interference with war work may apply to the War Production Board for permission to have another person make irons for them. Each application should be made by filing Form WPB-3550.1 in accordance with its instructions.

(d) *Restriction on production of certain parts.* No person other than those authorized to make electric irons on Form WPB-3550.1 shall make any sole plates (either cast, stamped or forged) or handles for electric irons, in a Group I labor area, except as permitted by the nearest field office of the War Production Board in writing.

(e) *Distribution.* It is the policy of the War Production Board that each manufacturer shall distribute his production through his normal distribution channels, taking into consideration shipments to areas during 1941, immigration of workers to certain areas, and such other factors as will provide equitable distribution to meet essential needs. The War Producton Board may direct the distribution of specified amounts from any manufacturer's production to meet emergencies.

(f) *Preference ratings for purchase of electric irons prohibited.* No preference rating for electric irons shall be valid for any purpose. All orders bearing preference ratings may be filled as unrated orders. This does not apply to any purchase order or contract calling for delivery to or for the account of the U. S. Army, Navy, Maritime Commission or the War Shipping Administration.

(g) *Reports.* Every manufacturer producing electric irons shall fill Form WPB-1600, executed in accordance with the instructions for filing that form with the War Production Board, Washington 25, D. C., Ref.: Order L-65-a, on or

before the 15th day of April, July, October and January. This form is a report of the number of electric irons made and shipped during the preceding quarter.

(h) *Applicability of other orders and regulations.* This order and all transactions affected by this order are subject to the applicable regulations of the War Production Board. If any other order of the War Production Board limits the use of any material in the production of electric irons to a greater extent than does this order, the other orders shall govern unless it states otherwise.

(i) *Violations.* Any person who wilfully violates any provision of this order, or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States, is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using material under priority control and may be deprived of priorities assistance.

(j) *Exceptions and appeals* — (1) Production under Priorities Regulation 25. Any person who wants to make electric irons and who has not been authorized to make them on Form CMPL-150-b (whether or not he made them in 1940), and any person who wants to make more electric irons than he was authorized to make on CMPL-150-B may apply for permission to do so as explained in Priorities Regulation 25. He may still, of course, apply on Form WPB 3550.1 for an authorization. Also a person located in a Group 1 labor area who wants to make sole plates or handles or who wants to make more sole plates or handles than he

has been authorized by the War Production Board under paragraph (d) may apply for permission to do so under Priorities Regulation 25.

2. *Appeals.* Any appeals from the provisions of this order other than paragraph (c) and (d) should be filed with the field office of the War Production Board for the district in which is located the plant or branch of the appellant to which the appeal rates. No appeals should be filed from the provisions of paragraph (c) and (d).

(k) *Communications.* All reports required to be filed hereunder, and all communications concerning this order shall, unless otherwise directed, be addressed to the War Production Board, Consumers Durable Goods Division, Washington 25, D. C., Ref.: L-65-a.

NOTE: The reporting provisions of this order have been approved by the Bureau of the Budget under the Federal Reports Act of 1942.

Issued this 19th day of August 1944.

WAR PRODUCTION BOARD,

By J. JOSEPH WHELAN,

Recording Secretary.

EXCERPT FROM DEFENDANT'S BRIEF SUR MOTION FOR JUDGMENT N.O.V.

4. *The contract sued upon was illegal and void when made and is therefore completely unenforceable.*

The undisputed evidence in this case shows that on November 10, 1944 the defendant had no authority to manufacture any irons in the year 1945. It was not until January 20, 1945 that an initial authorization of 4734 irons was made (R. 166). This was subsequently increased, but at no time during the first nine months of 1945 did the defendant have authority to make 1000 irons per day. It is submitted that the contract was illegal and consequently plaintiff cannot claim under it.

In 1944 the country was locked in a death struggle with the Axis powers. Its manpower and economy were dedicated to the defeat of the enemy. Civilian goods, particularly those containing materials necessary to the war effort such as iron, steel and copper, were largely unavailable in the markets, and had been manufactured in no quantity for several years. The use of manpower and materials was sharply controlled. Preference and priorities went to war essential goods. Every American knew these facts. To implement the war effort, Congress had passed the Second War Powers Act. Paragraphs (2), (7) and (8) of said Act provided as follows:

> "(2) Deliveries of material to which priority may be assigned pursuant to paragraph (1) shall include, in addition to deliveries of material under contracts or orders of the Army or Navy, deliveries of material under—
>
> "(A) Contracts or orders for the govern-

ment of any country whose defense of the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled 'An Act to promote the defense of the United States' (Title 22 §411 et seq.);

"(B) Contracts or orders which the President shall deem necessary or appropriate to promote the defense of the United States;

"(C) Subcontracts or suborders which the President shall deem necessary or appropriate to the fulfillment of any contract or order as specified in this subsection (a).

Deliveries under any contract or order specified in this subsection (a) may be assigned priority over deliveries under any other contract or order; and the President may require acceptance of and performance under such contracts or orders for the purpose of assuring such priority. Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

"(7) *No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regu-*

lation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid." (Emphasis supplied.)

"(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe." Mar. 27, 1942, 3 p.m., E. W. T., C. 199, Title III, section 301, 56 Stat. 177.

The President of the United States by Executive Order No. 9406 (50 U. S. C. A. App. 601, page 234 [*sic*]), transferred to the Chairman of the War Production Board the power to issue certification of necessity for materials, articles and equipment which theretofore had been under the Army and Navy.

Plaintiff relies on Section 599 of the Restatement of Contracts which states that recovery on an illegal contract is not precluded where:

"(a) facts of which one party is justifiably ignorant and the other party is not, or

"(b) statutory or executive regulations of a minor character relating to a particular business which are unknown to one party, who is justified in assuming special knowledge by the other party of the requirements of the law."

It can hardly be disputed that the Second War Powers Act would not be a statutory regulation of a "minor char-

acter." The lives of millions of Americans were directly affected by it. It was common knowledge that war materials were subject to priorities and that civilian goods could not be made either because of direct prohibition or because of unavailability of materials. To designate such regulations and orders as minor or applying to a particular business is nonsense. Of course different regulations and orders applied to different businesses, but in those days few were the concerns who were not touched by regulations. Certainly the plaintiff could not have been unaware that the electrical appliance industry was subject to stringent governmental control. Whether it knew the extent or exact nature of the control is immaterial. Plaintiff is bound by Section 7 of the Second War Powers Act above set forth.

(R. 248a)

PLAINTIFF'S POINT FOR CHARGE No. 11

Point No. 11—a contract in violation of law or with the purpose or effect of enabling the violation of law is illegal and unenforceable. The test is as to the legality at the time of the entering into of the alleged contract. On November 10, 1944, the date of the alleged agreement in suit, the nation was at war. The production of articles including irons maintaining essential materials, was controlled. The extent of the manufacture of irons was limited. It was illegal to manufacture irons except to the extent permitted by orders issued by the War Production Board. Neither the Plaintiff nor Defendant could engage in the production of irons except as permitted by law. Neither the Plaintiff nor Defendant had lawful authority

on November 10, 1944, or at any time during the first nine months of 1945 to manufacture a thousand or 750 irons per day, six or five days a week. If you find that no such lawful authority existed, the alleged contract in its entirety was illegal and unenforceable and your verdict must be for the Defendant. That point is affirmed and an exception granted to the Plaintiff.

IN THE
SUPREME COURT OF PENNSYLVANIA
Eastern District

January Term, 1953 No. 257

MASLO MANUFACTURING CORPORATION
(a corporation), *Appellee*

v.

PROCTOR ELECTRIC CORPORATION
(a corporation), *Appellant*

PETITION FOR REARGUMENT

TO THE HONORABLE THE JUSTICES OF THE SAID COURT:

The petition of Proctor Electric Corporation, Appellant, respectfully prays your Honorable Court to grant a reargument of this appeal, and in support thereof respectfully submits the following:

The opinion of this Court of March 22, 1954 affirmed per curiam the judgment of the court below on its opinion. That opinion was based upon a misapprehension of fact as to the appellant's position regarding the illegality of the oral contract allegedly made in the fourth quarter of 1944, to begin to be performed on January 15, 1945.

The opinion below, page 266a, states:

"We turn now to the last question, that of the

illegality of the contract. The defendant argues that the contract was illegal when made and hence there can be no recovery. The argument is that Proctor could not legally make such a contract because it lacked authority under the Second War Powers Act, 50 U. S. C. A. 633, to make electric flat irons. Defendant states that not until January 20, 1945 was it authorized to make any irons at all. The instant contract was to start January 15, 1945. The burden of establishing an illegal contract was on defendant. H. Daroff & Sons, Inc. v. Vitullo et al., 350 Pa. 501.

"The fatal defect in this argument is that on August 19, 1944 the War Production Board issued regulation L-65-a, which formally authorized a limited resumption of the manufacture of flat irons.

"Furthermore, by directive CMPL-150b of the War Production Board issued June 7, 1944, Proctor was authorized to manufacture 34,450 irons during the last quarter of 1944. It is therefore obvious that the argument that Proctor was not authorized to make *any* irons prior to January 20, 1945 is just not a fact."

It is incomprehensible how such a misunderstanding could have arisen in the court below.

The argument was never made. Such an argument or statement would have been patently absurd. For appellant introduced in evidence and relied upon that very directive, CMPL-150b of the War Production Board issued June 7, 1944, as the authorization in effect for the last quarter of 1944, the quarter of the alleged promise to furnish at the rate of 76,000 per quarter. That in fact was the only

authority shown. And it was less than half what Maslo said Conway had promised.[1]

That opinion, on which your Honorable Court affirmed, contains a statement that counsel asserted what was "just not a fact." That statement in the opinion below would not have been made except for a misunderstanding.

Probably the misapprehension below arose because production was not to begin until January 15th. Of course the fact was, as presented below, that for the first quarter of 1945 there existed no authority whatever until February 1, 1945.[2] That directive was for 4,734 irons, later increased to 19,819; and the later directives were 23,800 irons for the second quarter, and 36,800 for the third. So there was a conflict between the allocations and the "promise" in the quarter-year of the promise and the quarter-years of the performance. That conflict, which clearly constituted illegality, was not met, nor even dealt with, in the opinion below, and has not been met elsewhere.

We respectfully urge its consideration and decision by your Honorable Court.

In view of the unmistakable conflict between what was permitted under the War Powers Act and that which was asserted as the basis of recovery below, we urge the reconsideration of the remainder of the opinion below before its final adoption as the opinion of this court.

The opinion below contains another factual inaccuracy, namely the statement, "A further distinction, in

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[1] The court below overlooked the later reduction by 15,000 irons to 19,450 irons, which was the allocation in effect for the last quarter of 1944 as against the "promise" asserted by appellee, which would have amounted to 76,000 irons or nearly 400% more.

[2] The directive was not signed until February 1, 1948, although the first page bears the date 1/20/45. (70a, 71a.)

view of the regulations, is that it was a service contract, not a manufacturing contract." (p. 267a) *It was not a service contract.* A service contract relates to the upkeep, maintenance and care of *articles already manufactured.* This was the manufacture of essential parts of *new articles,* the plating of sole plates which involved the use of critical war materials.

Then there is the broad assertion, below, "This contract was legal when made." But that issue that the "contract' was in conflict with the allocations for the then quarter, and that it was in conflict with the allocations of the quarters of performance, is not met on either ground. The "promise" was in forbidden territory. The amount (76,000) was in excess of the current allocation under the War Powers Act. It was in disregard of the allocations to be. To say "when made" is to evade. Except as permitted, making is prohibited. The "promise" was in excess of both current and future quarterly allocations.

The points against appellant are based upon a manifest misapprehension: "If as defendant alleges the contract was illegal when made, then it was not obliged to pay for any of the work performed." (p. 267a) The element of illegality was injected by the assertion first made some five years after the event that there was a promise of one thousand a day, six days a week for the duration of the war and one year thereafter. Absent such allegation, the arrangement was perfectly proper and payments thereunder obligatory.

"Furthermore, its own actions during this period indicated no awareness on its part of any illegality. The action referred to is the obtaining of plates from a foundry in a number far in excess of the number hindsight indi-

cates was finally authorized" (R. 267a). There is no evidence as to obtaining any excess number of plates; there is no evidence as to how many sole plates were obtained. At no time did Proctor produce more than its allocations of electric irons.

The arguments in the opinion below under the proposition that, "Even if this contract were illegal we think plaintiff could recover thereon.", are all inapplicable to allocations under the War Powers Act involving the use of critical materials in wartime, and are otherwise unsound.

The law of November 10, 1944, the time of the "promise," remained the law of January 15, 1945, the time of performance. The maximum production permissible under the allocations remained substantially unchanged for the three succeeding quarters, except that they were nil until February 1, 1945. The allocations never equalled even a half of the 76,000 called for by the "promise," and fell nearly to one-fourth of that figure. The production never exceeded the applicable quarterly allocations. There was no violation of law. But the judgment below was for loss of profits because appellant did not violate the law by exceeding such allocations so that critical war materials could be used for plating civilian goods.

We respectfully urge the reconsideration of the last three paragraphs of the opinion below which advance the doctrine that even if this contract were illegal plaintiff could recover thereon:

> "Even if this contract were illegal we think plaintiff could recover thereon. Plaintiff could base a recovery on either (a) or (b) of Section 559 [*sic*] of the Restatement of Contracts; (a) allows recovery where

there are facts of which one party is *justifiably ignorant* and the other party is not, or (b) statutory or executive regulations of a *minor character* relating to a particular business which are unknown to one party, who is justified in assuming special knowledge by the other party of the requirements of the law."

(a) "Where there are facts of which one party is justifiably ignorant and the other party is not."

There were no such "facts" either averred or proved or indeed even argued except by asking three questions in the next paragraph but one and rhetoric is not proof. There are obvious answers to these questions.

Q. How would plaintiff ascertain what allotment was authorized Proctor?

A. By asking. That he knew enough to put him on notice is clear from his own testimony, 140a, 142b, excerpts from which are printed pp. 35, 36 of Appellant's Reply Brief and there was a duty to ask before "accepting" the extraordinary "promise" of 76,000 sole plates per quarter.

Q. How would he learn whether or not Proctor had applied for its allotment?

A. By asking, of course. Either it would have been uncalled for as the equivalent of "Are you breaking the law? or there was a duty to ascertain the allocations. So the hypothesized "ignorance" could not have been "justifiable."

Q. Could plaintiff be held responsible for knowledge of defendant's 1940 production?

A. No one is trying to hold him responsible. That production is irrelevant except as a partial guide to the War Production Board in making up the allocations. *The*

directives and allocations were controlling, and readily ascertained.

Defendant's Point No. 11 (R. 248a) was affirmed by the Court below:

> "Point No. 11—a contract in violation of law or with the purpose or effect of enabling the violation of law is illegal and unenforceable. The test is as to the legality at the time of the entering into of the alleged contract. On November 10, 1944, the date of the alleged agreement in suit, the nation was at war. The production of articles including irons containing essential materials was controlled. The extent of the manufacture of irons was limited. It was illegal to manufacture irons except to the extent permitted by orders issued by the War Production Board. Neither the Plaintiff nor Defendant could engage in the production of irons except as permitted by law. Neither the Plaintiff nor Defendant had lawful authority on November 10, 1944, or at any time during the first nine months of 1945 to manufacture a thousand or 750 irons per day, six or five days a week. If you find that no such lawful authority existed, the alleged contract in its entirety was illegal and unenforceable and your verdict must be for the Defendant. That point is affirmed and an exception granted to the Plaintiff." (R. 248a)

The facts stated in that Point are true and correct, are not questioned or modified by any facts in the opinion below or in the evidence or in the appellee's brief. Those facts call for binding instructions for defendant appellant here.

While the motion is directed primarily to the federal question involved, your Honorable Court in view of the way in which the three questions involved are intertwined may well prefer to grant a general reargument.

WHEREFORE, your petitioner respectfully prays that this Honorable Court grant a reargument in this appeal.

/s/ THOMAS RAEBURN WHITE,
/s/ IRA JEWELL WILLIAMS,
Attorneys for Appellant.

COMMONWEALTH OF PENNSYLVANIA }
CITY AND COUNTY OF PHILADELPHIA } ss:

IRA JEWELL WILLIAMS, being duly sworn according to law, deposes and says that he is one of the attorneys for the Appellant, and that the foregoing petition for reargument and statements made therein are all presented in good faith and that the said petition is not filed for the purpose of delay.

/s/ IRA JEWELL WILLIAMS.

Sworn to and subscribed before me
this 30th day of March, A. D. 1954.

/s/ PEARL H. LOVERING,
Notary Public,
1900 Land Title Bldg., Phila. 10.

My Commission Expires January 29, 1955.

IN THE
SUPREME COURT OF PENNSYLVANIA
Eastern District

January Term, 1953 No. 257

MASLO MANUFACTURING CORPORATION
(a corporation) *Appellee*

v.

PROCTOR ELECTRIC CORPORATION
(a corporation) *Appellant*

MEMORANDUM SUR PETITION FOR REARGUMENT

TO THE HONORABLE, THE JUSTICES OF THE SAID COURT:

The court is respectfully referred to the following excerpts from the Second War Powers Act [56 Stat. 176 (1942), 50 U. S. C. App. §631 et seq.] which were included in the Additional New Matter in Petitioner's pleadings below. (R. 48a, 50a)

> ". . . Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may

allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

[ibid at §633 (2a 2C)]

and

"No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this subsection (a) or any rule, regulation, or order issued thereunder, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid."

[ibid at §633 (2a 7)]

The above provisions of the Second War Powers Act are submitted as of controlling importance herein.

/s/ T. R. WHITE,
/s/ I. J. WILLIAMS,
Attorneys for Proctor Electric Corporation Appellant and Petitioner herein.

[redacted]

[redacted]

[redacted]

PROCTOR ELECTRIC CO.
ELECTRICAL APPLIANCES
Third St. and Hunting Park Ave.
Philadelphia, Penna.

B 12

FOR PURCHASER'S USE ONLY
REGISTER NO. | VOUCHER NO.
P. O. B. CHECKED
TERMS APPROVED | PRICE APPROVED
CALCULATIONS CHECKED
TRANSPORTATION
FREIGHT BILL NO. | AMOUNT
MATERIAL RECEIVED
19
DATE | SIGNATURE | TITLE
SATISFACTORY AND APPROVED
ADJUSTMENTS
ACCOUNTING DISTRIBUTION
AUDITED | FINAL APPROVAL
TERMS
2% 10 DAYS 30 DAYS NET

ORDER ENTERED	HOW AND WHEN TO SHIP	CUSTOMER'S ORDER NO.	OUR INVOICE NO.
2-9-45	PICKED UP		B 54

SOLD TO

MASLO MARINE CO
356 BINGAHAM STREET
READING PA

SHIPPED TO

SAME

2-9-45

P1

ORDERED	SHIPPED	STYLE	DESCRIPTION	LIST	EXTENSION	DISCOUNT	NET TOTAL
3			3" FACE SOLEPLATE WHEELS				
3			5" FACE SOLEPLATE WHEELS (DELIVERED 12/15/44 BY B. CONWAY)				N/C
5			5" FACE SOLEPLATE WHEELS (PICKED UP TODAY BY MR. MASLO)				

THE ABOVE ITEMS ARE LOANED FOR USE IN MANUFACTURING IRON PARTS ORDERED BY US AND SHOULD BE RETURNED IN 90 DAYS.

SALES DIVISION OF PROCTOR & SCHWARTZ, INC.

L

PROCTOR ELECTRIC CO.
ELECTRICAL APPLIANCES
Third St. and Hunting Park Ave.
Philadelphia, Penna.

B 12

FOR PURCHASER'S USE ONLY
REGISTER NO. | VOUCHER NO.
P. O. B. CHECKED
TERMS APPROVED | PRICE APPROVED
CALCULATIONS CHECKED
TRANSPORTATION
FREIGHT BILL NO. | AMOUNT
MATERIAL RECEIVED
19
DATE | SIGNATURE | TITLE
SATISFACTORY AND APPROVED
ADJUSTMENTS
ACCOUNTING DISTRIBUTION
AUDITED | FINAL APPROVAL
TERMS
2% 10 DAYS 30 DAYS NET

ORDER ENTERED	HOW AND WHEN TO SHIP	CUSTOMER'S ORDER NO.	OUR INVOICE NO.
1-15-45	READING TRANS CO PREPAID		B-24

SOLD TO

MASLO MARINE MFG CO.
356 VINGAHAM STREET
READING PENNA

SHIPPED TO

1-18-45

P2

ORDERED	SHIPPED	STYLE	DESCRIPTION	LIST	EXTENSION	DISCOUNT	NET TOTAL
1			POLISHING LATHE M1505				N/C

THIS MACHINE IS LOANED FOR USE IN MANUFACTURING PARTS ORDERED BY US.

SALES DIVISION OF PROCTOR & SCHWARTZ, INC.

L

Exhibit P 1
Exhibit P 2

Cleaning Cycle for chrome plate

#1 Direct clean - in 6 oz per gallon solution of Anodex #9 30 seconds

#2 - Cold water Rinse

#3 - Muriatic acid dip - 35% solution for 30 seconds

#4 - Cold Water Rinse

#5 - Chrome plate

~~P-8~~ P3

P-7 Cleaning Cycle for Nickel Plate

#1 Direct Clean 1 oz per gal of Anodex #9 cleaner for 30 seconds

#2 Reverse Clean 1 oz per gal of Anodex #9 cleaner for 30 seconds

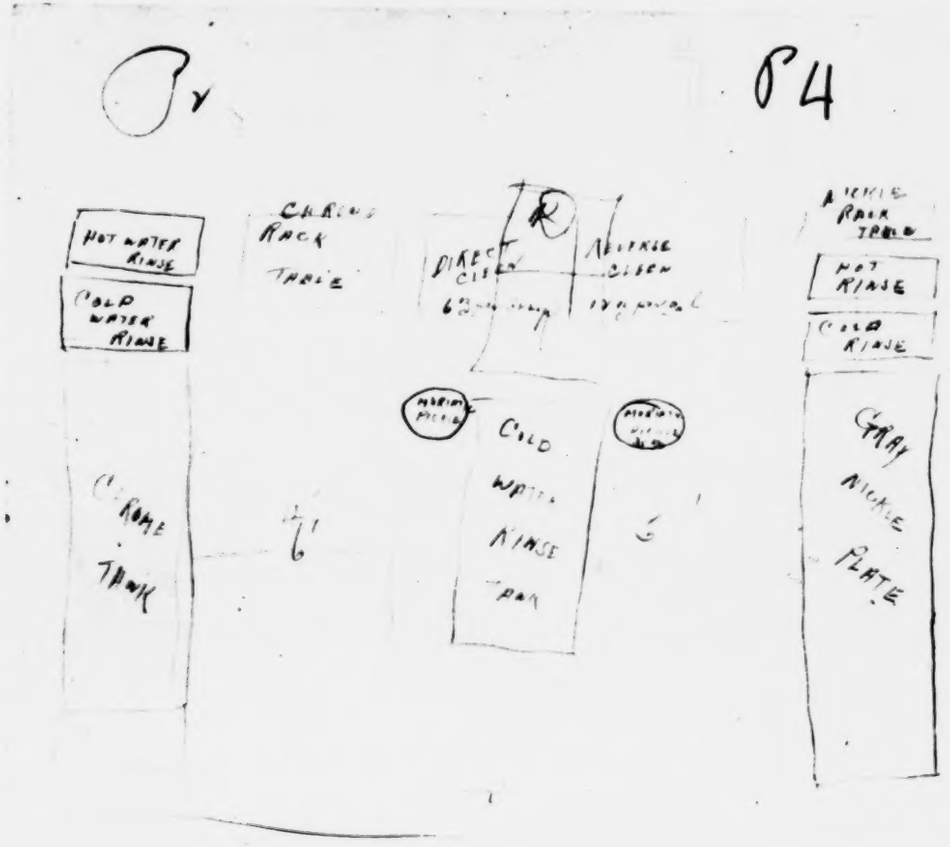
#3 - Cold Water Rinse

#4 - Muriatic Acid dip 35% solution - for hyperid 15 seconds

#5 - Cold Water Rinse

#6 - Plate

P3



CLEAN CYCLE FOR Ni PLATE

#1 - DIRECT CLEAN 30 SEC
#2 - REVERSE CLEAN 30 SEC
#3 - COLD WATER RINSE
#4 - MURIATIC PICKLE 15 SEC
#5 - COLD WATER RINSE
#6 Ni PLATE
#7 - COLD RINSE
#8 - HOT RINSE

CLEAN CYCLE FOR CHROME PLATE

#1 DIRECT CLEAN 30 SEC
#2 COLD WATER RINSE
#3 ACID PICKLE 15 SEC
#4 COLD RINSE
#5 - CHROME PLATE
#6 - COLD RINSE
#7 - HOT RINSE

PROCTOR ELECTRIC CO.
ELECTRICAL APPLIANCES
Third St. and Hunting Park Ave.
Philadelphia, Penna.

FOR PURCHASER'S USE ONLY
REGISTER NO. | VOUCHER NO.
F. O. B. CHECKED
TERMS APPROVED | PRICE APPROVED
CALCULATIONS CHECKED
TRANSPORTATION
FREIGHT BILL NO. | AMOUNT
MATERIAL RECEIVED
DATE | SIGNATURE | TITLE
SATISFACTORY AND APPROVED
ADJUSTMENTS
ACCOUNTING DISTRIBUTION
AUDITED | FINAL APPROVAL
TERMS XXXXXXXXX 30 DAYS NET

ORDER ENTERED	HOW AND WHEN TO SHIP	CUSTOMER'S ORDER NO.	OUR INVOICE NO.
1-13-45	PICK UP		B 23

SOLD TO: MR MASLO
SHIPPED TO: 1-13-45 SAME

MASLO MARINE MFG CO.
356 BINGAHAM STREET
READING PENNA

ATTN: MR WM MASLO

ORDERED	SHIPPED	STYLE	DESCRIPTION	LIST	EXTENSION	DISCOUNT	NET TOTAL
15 SECTIONS			12" X 1 1/8" X 18 PLY 8 OZ. FLANNEL BUFF	.4679	7.02	NET	7.02
15 LBS.			NON PITTER #2 PASTE	2.6689	40.03	NET	40.03
100 LBS.			#120 EMERY (NAXOS)	.075	7.50	NET	7.50
							54.55
			THIS IS A MEMO INVOICE. THIS MATERIAL SHOULD BE REPLACED WITHIN 90 DAYS AT WHICH TIME FULL CREDIT WILL BE ISSUED.				

SALES DIVISION OF PROCTOR & SCHWARTZ, INC.

PROCTOR ELECTRIC CO.
ELECTRICAL APPLIANCES
Seventh Street and Taber Road
Philadelphia, Penna.

FOR PURCHASER'S USE ONLY
REGISTER NO | VOUCHER NO
F. O. B. CHECKED
TERMS APPROVED | PRICE APPROVED
CALCULATIONS CHECKED
TRANSPORTATION
FREIGHT BILL NO | AMOUNT
MATERIAL RECEIVED
DATE | SIGNATURE | TITLE
SATISFACTORY AND APPROVED
ADJUSTMENTS
ACCOUNTING DISTRIBUTION
AUDITED | FINAL APPROVAL
TERMS 2% 10 DAYS 30 DAYS NET

ORDER ENTERED	HOW AND WHEN TO SHIP	CUSTOMER'S ORDER NO.	OUR INVOICE NO.
1-24-45	READING		B-34

SOLD TO: TRANSPORTATION CO PREPAID
SHIPPED TO: 1-27-45

MASLO MARINE CO
356 BINGAHAM STREET
READING PENNA

ORDERED	SHIPPED	STYLE	DESCRIPTION	LIST	EXTENSION	DISCOUNT	NET TOTAL
1			BELT DRIVER LATHE				N/C
4			2L / 2R LATHE NUTS				
12			SOLEPLATE BOXES				
12			CHROME SOLE PLATE RACKS				
			THIS EQUIPMENT IS LOANED FOR USE IN MANUFACTURING PARTS ORDERED BY US				

SALES DIVISION OF PROCTOR & SCHWARTZ, INC.

Exhibit P 5
Exhibit P 6

EB-1-REV.

DM 1990

PROCTOR ELECTRIC CO.
Electrical Appliances
Hunting Park Ave., West of Third St.
Philadelphia, Penna.

DEBIT MEMORANDUM

DATE ENTERED	HOW AND WHEN TO SHIP	YOUR INVOICE NO.	OUR PURCHASE ORDER NO.
4/23/45			

CHARGE TO

Maslo Marine Co.
356 Bingaman Street
Reading, Pa.

SHIP TO

P7

WE ARE CHARGING YOU WITH THE ~~REMOVAL~~ RETURN OF THE FOLLOWING MATERIALS RECEIVED FROM YOU:

244	lbs	Lum p Pumice	.07617	18.59
15	sections	12" x 1-1/8" x 18 ply, 8 oz. Flannel Buff	.4679	7.02
15	lbs	Non Pitter #2 paste	2.6689	40.03
100	lbs	#120 Emery (NAXOS)	.075	7.50
				72.14

REASON FOR CHARGE-BACK

Material which we have shipped for use on our Sole plate order, for which you have agreed to accept a charge-back.

SALES DIVISION OF PROCTOR & SCHWARTZ, INC.

PACKING SLIP
FROM
PROCTOR ELECTRIC CO.
THIRD ST. AND HUNTING PARK AVE.
PHILADELPHIA, PA.

1-24-45

MASLO MARINE CO
356 BINGAHAM STREET
READING PENNA

DO NOT DROP **FRAGILE** USE CARE

FROM
PROCTOR ELECTRIC CO.
ELECTRICAL APPLIANCES
THIRD ST. AND HUNTING PARK AVE.
PHILADELPHIA, PA.

CUST. ORDER NO. | OUR INVOICE NO. B-34

TO

P8

POSTMASTER

CONTENTS MERCHANDISE

THIS PARCEL MAY BE OPENED FOR POSTAL INSPECTION IF NECESSARY

IF NOT DELIVERED IN 15 DAYS RETURN TO SENDER

RETURN AND FORWARDING POSTAGE GUARANTEED

ORDERED	SHIPPED	STYLE	DESCRIPTION	LIST	EXTENSION	DISCOUNT	NET TOTAL
1			BELT DRIVER LATHE				
4			LA LATHE NUTS				
12			SOLEPLATE BOXES				
12			CHROME SOLE PLATE PACKS				
			THIS EQUIPMENT IS LOANED FOR USE IN MANUFACTURING PARTS ORDERED BY US				

SALES DIVISION OF PROCTOR & SCHWARTZ INC

Exhibit P 7
Exhibit P 8

5b

(Uniform Domestic Straight Bill of Lading. Adopted by Carriers in Official, Southern, Western and Illinois Classification Territories, March 15, 1929, as amended August 1, 1930, and June 15, 1941)

1

This Memorandum is an acknowledgment that a Bill of Lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.
RECEIVED, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading

From PROCTOR ELECTRIC COMPANY P8a
(DIVISION OF PROCTOR & SCHWARTZ INC.)

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is hereby agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

at Philadelphia, Pa. Jan 27 1945 Shipper's No. 3-4

Rec'd subject to Section 7 of conditions of bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor.)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Rec'd $ ... to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per ...
(The signature here acknowledges only the amount prepaid)

Charges Advanced: $

Consigned to Modern Electric Mfg Co
3-5 Bingaman St Phila Pa
(Mail or street address of consignee—For purposes of notification only.)

Destination Reading State of Pa County of

Route

Delivering Carrier Car Initial Car No.

No. Cartons	Description of Articles, Special Marks, and Exceptions	*WEIGHT (Sub. to Correct'n)	Class or Rate	Check Column
	SAD IRONS, ELECTRIC			
	STOVES, IRON OR STEEL, ELECTRIC COOKING, N.O.I.B.N.			
	TOASTERS, ELECTRIC			
	TRAYS, SERVING, NOT WHEELED, N.O.I.B.N.			
	WAFFLE IRONS, ELECTRIC			
	COOKERS, ELECTRIC			
	COOKERS, ELECTRIC, PARTS			
	CHINAWARE, N.O.I.B.N. Released to value not exceeding $20.00 per cwt.			
	GLASSWARE, other than cut, N.O.I.B.N. Released to value not exceeding $20.00 per cwt.			
	ADVERTISING MATTER, Catalogues, Circulars, Leaflets, Pamphlets, Sheets or Price Lists.			
	ADVERTISING MATTER, Displays, Store or Window, paper or paperboard, flat or folded flat.			
1	Polishing Jar Lee Machine	600*		
	on Skids			
1	Buf. Racks, N.O.I.B.N. FLAT	78*		
2	Wood Boxes.	144*		

"Shipper's imprint in lieu of stamp; not a part of bill of lading approved by the Interstate Commerce Commission."

The agreed or declared value of the property is specifically stated by the shipper to be not exceeding ... per ...

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
NOTE—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon, and all other requirements of Rule 41 of the Consolidated Freight Classification.

PROCTOR ELECTRIC COMPANY
(DIVISION OF PROCTOR & SCHWARTZ INC.)

Per ... Agent

Per ... Agent

Permanent postoffice address of shipper, 3rd ST. & HUNTING PARK AVE. PHILADELPHIA, PA.

If signed by an Express Company or its Agent, subject to all the conditions of the regular Bill of Lading of said Company on the date in force of this issue of shipment.

Exhibit P 8a

6b

PROCTOR ELECTRIC CO.
ELECTRICAL APPLIANCES
Third St. and Hunting Park Ave.
Philadelphia, Penna.

FOR PURCHASER'S USE ONLY
REGISTER NO. | VOUCHER NO.
F. O. B. CHECKED
TERMS APPROVED | PRICE APPROVED
CALCULATIONS CHECKED
TRANSPORTATION
FREIGHT BILL NO. | AMOUNT
MATERIAL RECEIVED
DATE | SIGNATURE | TITLE
SATISFACTORY AND APPROVED
ADJUSTMENTS
ACCOUNTING DISTRIBUTION
AUDITED | FINAL APPROVAL
TERMS XXXXXXXXX 30 DAYS NET

ORDER ENTERED	HOW AND WHEN TO SHIP	CUSTOMER'S ORDER NO.	OUR INVOICE NO.
2-12-45	RDG TRANSP CO		B-55

SOLD TO PPD SHIPPED TO

2-13-45

MASLO MARINE CO
356 BINGAMAN STREET
READING PENNA

ORDERED	SHIPPED	STYLE	DESCRIPTION	LIST	EXTENSION	DISCOUNT	NET TOTAL
100		LBS.	CHROMIC ACID FLAKE	.18930	18.93	NET	18.93
244		LBS.	LUMP PUMICE	.07617	18.59	NET	18.59
							37.52

THIS IS A MEMO INVOICE.
THIS MATERIAL IS LOANED FOR USE IN MANUFACTURING IRON PARTS ORDERED BY US AND SHOULD BE RE-PLACED WITHIN 90 DAYS.

SALES DIVISION OF PROCTOR & SCHWARTZ, INC.

PROCTOR ELECTRIC CO.
ELECTRICAL APPLIANCES
Third St. and Hunting Park Ave.
Philadelphia, Penna.

FOR PURCHASER'S USE ONLY
REGISTER NO. | VOUCHER NO.
F. O. B. CHECKED
TERMS APPROVED | PRICE APPROVED
CALCULATIONS CHECKED
TRANSPORTATION
FREIGHT BILL NO. | AMOUNT
MATERIAL RECEIVED
DATE | SIGNATURE | TITLE
SATISFACTORY AND APPROVED
ADJUSTMENTS
ACCOUNTING DISTRIBUTION
AUDITED | FINAL APPROVAL
TERMS XXXXXXX 30 DAYS NET

ORDER ENTERED	HOW AND WHEN TO SHIP	CUSTOMER'S ORDER NO.	OUR INVOICE NO.
2-19-45	READING TRANSP CO		B-58

SOLD TO PREPAID SHIPPED TO

2-21-45

MASLO MARINE CO
356 BINGAMAN STREET
READING PENNA

ORDERED	SHIPPED	STYLE	DESCRIPTION	LIST	EXTENSION	DISCOUNT	NET TOTAL
1		BBL	ANODEX CLEANER #9 (400 LBS) PER LB.	.10384	41.54	NET	41.54

THIS IS A MEMO INVOICE.
THIS MATERIAL IS LOANED FOR USED IN MANUFACTURING IRON PARTS ORDERED BY US AND SHOULD BE REPLACED WITHIN 15 DAYS AT WHICH TIME CREDIT WILL BE ISSUED.

SALES DIVISION OF PROCTOR & SCHWARTZ, INC.

Exhibit P 9
Exhibit P 10

7b

PROCTOR ELECTRIC CO.
ELECTRICAL APPLIANCES
Third St. and Hunting Park Ave.
Philadelphia, Penna.

DUPLICATE

ORDER ENT RED	HOW AND WHEN TO SHIP	CUSTOMER'S ORDER NO.	OUR INVOICE NO.
2-19-45	READING TRANSP CO		B-58

SOLD TO PREPAID SHIPPED TO

2-21-45

MASLO MARINE CO
356 BINGAMAN STREET
READING PENNA

FOR PURCHASER'S USE ONLY

REGISTER NO. | VOUCHER NO.
P. O. K CHECKED
TERMS APPROVED | PRICE APPROVED
CALCULATIONS CHECKED
TRANSPORTATION
FREIGHT BILL NO. | AMOUNT
MATERIAL RECEIVED
19 DATE | SIGNATURE | TITLE
SATISFACTORY AND APPROVED
ADJUSTMENTS
ACCOUNTING DISTRIBUTION
AUDITED | FINAL APPROVAL
TERMS XXXXXXX 10 DAYS 30 DAYS NET

ORDERED	SHIPPED	STYLE	DESCRIPTION	LIST	EXTENSION	DISCOUNT	NET TOTAL
1		BBL	ANODEX CLEANER #9 (400 LBS) PER LB.	.10384	41.54	NET	41.54

THIS IS A MEMO INVOICE.
THIS MATERIAL IS LOANED FOR USED IN MANUFACTURING IRON PARTS ORDERED BY US AND SHOULD BE REPLACED WITHIN 15 DAYS AT WHICH TIME CREDIT WILL BE ISSUED.

SALES DIVISION OF PROCTOR & SCHWARTZ, INC.

Exhibit P 11

PROCTOR ELECTRIC COMPANY

DIVISION OF PROCTOR AND SCHWARTZ, INC.

Automatic Electrical Appliances

THIRD STREET AND HUNTING PARK AVENUE, PHILADELPHIA, 40, PENNSYLVANIA • TELEPHONE MICHIGAN 6790

June 14, 1945

Maslo Marine Mfg. Corp.
316 Bingaman Street
Reading, Pa.

Att'n: Mr. William Maslo

Gentlemen:

We return herewith your invoice #2813, dated June 13th covering the processing of 6080 Sole Plates, as we believe it to be in error.

Some time ago when the writer was in your office with Mr. Conway, you were authorized to bill us for a certain number of sole plates which were not up to standard, at an increase in the then current price of $.32 per plate. However, it was understood at that time, that upon the completion of this special lot of poor quality plates, your cost would revert to the originally discussed price of $.28 per plate.

For this reason, your invoice which is made out at the rate of $.32 per plate is being returned for correction.

Very truly yours,

F. B. M. Cardeza, Jr.

F. B. M. Cardeza, Jr.
Purchasing Agent
PROCTOR ELECTRIC COMPANY
(Div. of Proctor & Schwartz, Inc.)

FBMC,Jr/my

Exhibit P 18

2-12
J1

PROCTOR ELECTRIC COMPANY

DIVISION OF PROCTOR AND SCHWARTZ, INC.

Automatic Electrical Appliances

THIRD STREET AND HUNTING PARK AVENUE, PHILADELPHIA, 40, PENNSYLVANIA • TELEPHONE MICHIGAN 6790

November 28, 1945

P13
D M.

Maslo Marine Mfg. Co.
316 Bingaman Street
Reading, Pa.

Attention: Mr. William Maslo

Re: Purchase orders P 17733 and P 18603

Gentlemen:

Due to a change in our production set up we regret that it becomes necessary to cancel the subject purchase orders.

Will you therefore upon receipt of this letter take immediate steps to ship back to us all of the equipment which is our property on loan to you for use in manufacturing against our orders. In addition, all the boxes, tote pans, sole plates which you have in your plant and which are our property should also be enclosed in the shipment.

Kindly advise the writer when this shipment is made and furnish us a listing of equipment and materials returned.

Very truly yours,

F. B. M. Cardeza Jr

F. B. M. Cardeza, Jr.
Purchasing Agent
PROCTOR ELECTRIC COMPANY
(Div. of Proctor & Schwartz, Inc.)

FBMC,Jr/my

Exhibit P 13

[fol. 289] JANUARY TERM, 1953

257

Edwin Fischer 6-11-53

MASLO MANUFACTURING CORPORATION, a corporation, Plaintiff

vs.

Ira Jewell Williams

PROCTOR ELECTRIC COMPANY (a Corporation), Defendant

Appeal of Defendant

No. 4230, March Term, 1950 from the judgment

(Tried in C. P. No. 5.)

Appeal from Court of Common Pleas No. 3 of the County of Philadelphia. Filed June 9, 1953 Eo die certiorari exit. Retble. second Monday, November, 1953.

June 19, 1953. Record returned and filed. (2 vols. Notes of Testimony).

November 11, 1953. Stipulation for continuance filed.

November 11, 1953. Approved for January 1954 session.

January 5, 1954. Argued. (J-7)

March 22, 1954. Judgment for plaintiff is affirmed. Per Curiam.

March 30, 1954. Petition for reargument filed. Ira Jewell Williams.

March 31, 1954. Affidavit of service of petition filed.

April 1, 1954. Answer to petition filed.

April 12, 1954. Petition denied. Per Curiam.

April 12, 1954. Petition to retain record until the decision of the Supreme Court of United States is filed, filed. Ira J. Williams.

[fol. 290] MASLO MANUFACTURING CORPORATION, a Corporation, Plaintiff

vs.

PROCTOR ELECTRIC COMPANY, (a corporation) Defendant

April 12, 1954. Affidavit of service of petition filed.

And now, to wit, twelfth day of April, 1954, on consideration of the within petition and upon motion of Thomas Raeburn White, Esq., and Ira Jewell Williams, Esq., attorneys for the petitioner, it is ordered that the return of the record in the above captioned case be stayed until the decision of the Supreme Court of the United States on the petition for a writ of certiorari to be filed by petitioner. Per Curiam.

June 4, 1954. Praecipe for certification of record filed. Ira Jewell Williams.

[fol. 291] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT, JANUARY TERM, 1953

No. 257

MASLO MANUFACTURING CORPORATION

v.

PROCTOR ELECTRIC COMPANY, Appellant

Appeal from Judgment of Court of Common Pleas No. 3 (tried in Common Pleas No. 5) of Philadelphia County at No. 4230 March Term, 1950

OPINION OF THE COURT—Filed March 22, 1954

Per CURIAM:

In this action for damages for breach of an oral contract, the issues were largely factual. That there was an agreement between the parties for the finishing by the plaintiff company of sole plates of electric irons for the defendant is not open to question. What the agreement in its entirety was and what were the respective undertakings

and engagements of the parties in detail constituted the matters in dispute. The issues were submitted to the jury in a clear, thorough and impartial charge by the learned trial judge. The jury returned a verdict in favor of the plaintiff in the sum of $10,000 which was well within the proofs of damage. The defendant moved for a new trial and judgment n. o. v. but later expressly abandoned its motion for a new trial. The court en banc overruled the motion for judgment n. o. v. and entered judgment on the verdict for the plaintiff. On its appeal to this court, the defendant company urges the same questions of law as it raised in the court below which were fully discussed and correctly disposed of in the opinion for the court en banc, sur the defendant's motion for judgment n. o. v., whereon the judgment for the plaintiff is now

Affirmed.

Endorsement: [7] In the Supreme Court of Pennsylvania, Eastern District. No. 257 January Term, 1953. Maslo Manufacturing Company Corporation v. Proctor Electric Company, Appellant. Appeal from Judgment of Court of Common Pleas No. 3. (Tried in Common Pleas No. 5) of Philadelphia County at No. 4230 March Term, 1950. Argued: January 5, 1954—Affirmed. Per Curiam—Filed Mar. 22, 1954, Supreme Court Western District.

[fol. 292] In the Supreme Court of Pennsylvania, Eastern District, January Term, 1953

No. 257

Maslo Manufacturing Corporation (a Corporation), Appellee,

vs.

Proctor Electric Corporation (a Corporation), Appellant

Petition for Reargument

To the Honorable the Justices of the said Court:

The petition of Proctor Electric Corporation, Appellant, respectfully prays your Honorable Court to grant a re-

argument of this appeal, and in support thereof respectfully submits the following:

The opinion of this Court of March 22, 1954 affirmed per curiam the judgment of the court below on its opinion. That opinion was based upon a misapprehension of fact as to the appellant's position regarding the illegality of the oral contract allegedly made in the fourth quarter of 1944, to begin to be performed on January 15, 1945.

The opinion below, page 266a, states:

> "We turn now to the last question that of the illegality of the contract. The defendant argues that the contract was illegal when made and hence there can be no recovery. The argument is that Proctor could not legally make such a contract because it lacked authority under the Second War Powers Act, 50 U. S. C. A. 633, to make electric flat irons. Defendant states that not [fol. 293] until January 20, 1945 was it authorized to make any irons at all. The instant contract was to start January 15, 1945. The burden of establishing an illegal contract was on defendant. H. Daroff & Sons, Inc. v. Vitullo et al., 350 Pa. 501.
>
> The fatal defect in this argument is that on August 19, 1944 the War Production Board issued regulation L-65-a, which formally authorized a limited resumption of the manufacture of flat irons.
>
> Furthermore, by directive CMPL-150b of the War Production Board issued June 7, 1944, Proctor was authorized to manufacture 34,450 irons during the last quarter of 1944. It is therefore obvious that the argument that Proctor was not authorized to make *any* irons prior to January 20, 1945 is just not a fact."

It is incomprehensible how such a misunderstanding could have arisen in the court below.

The argument was never made. Such an argument or statement would have been patently absurd. For appellant introduced in evidence and relied upon that very directive, CMPL-150b of the War Production Board issued June 7, 1944, as the authorization in effect for the last quarter of 1944, the quarter of the alleged promise to furnish at the rate of 76,000 per quarter. That in fact was the only au-

thority shown. And it was less than half what Maslo said Conway had promised.[1]

That opinion, on which your Honorable Court affirmed, contains a statement that counsel asserted what was "just not a fact." That statement in the opinion below would not have been made except for a misunderstanding.

Probably the misapprehension below arose because production was not to begin until January 15th. Of course the [fol. 294] fact was, as presented below, that for the first quarter of 1945 there existed no authority whatever until February 1, 1945.[2] That directive was for 4,734 irons, later increased to 19,819; and the later directives were 23,800 irons for the second quarter, and 36,800 for the third. So there was a conflict between the allocations and the "promise" in the quarter-year of the promise and the quarter-years of the performance. That conflict, which clearly constituted illegality, was not met, nor even dealt with, in the opinion below, and has not been met elsewhere.

We respectfully urge its consideration and decision by your Honorable Court.

In view of the unmistakable conflict between what was permitted under the War Powers Act and that which was asserted as the basis of recovery below, we urge the reconsideration of the remainder of the opinion below before its final adoption as the opinion of this court.

The opinion below contains another factual inaccuracy, namely the statement, "A further distinction, in view of the regulations, is that it was a service contract, not a manufacturing contract." (p. 267a) *It was not a service contract.* A service contract relates to the upkeep, maintenance and care of *articles already manufactured.* This was the manufacture of essential parts of *new articles*, the plating

---

[1] The court below overlooked the later reduction by 15,000 irons to 19,450 irons, which was the allocation in effect for the last quarter of 1944 as against the "promise" asserted by appellee, which would have amounted to 76,000 irons or nearly 400% more.

[2] The directive was not signed until February 1, 1948, although the first page bears the date 1/20/45. (70a, 71a)

of sole plates which involved the use of critical war materials.

Then there is the board assertion, below, "This contract was legal when made." But that issue that the "contract" [fol. 295] was in conflict with the allocations for the then quarter, and that it was in conflict with the allocations of the quarters of performance, is not met on either ground. The "promise" was in forbidden territory. The amount (76,000) was in excess of the current allocation under the War Powers Act. It was in disregard of the allocations to be. To say "when made" is to evade. Except as permitted, making is prohibited. The "promise" was in excess of both current and future quarterly allocations.

The points against appellant are based upon a manifest misapprehension: "If as defendant alleges the contract was illegal when made, then it was not obliged to pay for any of the work performed." (p. 276a) The element of illegality was injected by the assertion first made some five years after the event that there was a promise of one thousand a day, six days a week for the duration of the war and one year thereafter. Absent such allegation, the arrangement was perfectly proper and payments thereunder obligatory.

"Furthermore, its own actions during this period indicated no awareness on its part of any illegality. The action referred to is the obtaining of plates from a foundry in a number far in excess of the number hindsight indicates was finally authorized" (R. 276a). There is no evidence as to obtaining any excess number of plates; there is no evidence as to how many sole plates were obtained. At no time did Proctor produce more than its allocations of electric irons.

The arguments in the opinion below under the proposition that, "Even if this contract were illegal we think plaintiff could recover thereon.", are all inapplicable to allocations under the War Powers Act involving the use of critical materials in wartime, and are otherwise unsound.

[fol. 296] The law of November 10, 1944, the time of the "promise", remained the law of January 15, 1945, the time of performance. The maximum production permissible under the allocations remained substantially unchanged for the three succeeding quarters, except that they were nil

until February 1, 1945. The allocations never equalled even a half of the 76,000 called for by the "promise", and fell nearly to one-fourth of that figure. The production never exceeded the applicable quarterly allocations. There was no violation of law. But the judgment below was for loss of profits because appellant did not violate the law by exceeding such allocations so that critical war materials could be used for plating civilian goods.

We respectfully urge the reconsideration of the last three paragraphs of the opinion below which advance the doctrine that even if this contract were illegal plaintiff could recover thereon:

> "Even if this contract were illegal we think plaintiff could recover thereon. Plaintiff could base a recovery on either (a) or (b) of Section 559 of the Restatement of Contracts; (a) allows recovery where there are facts of which one party is *justifiably ignorant* and the other party is not, or (b) statutory or executive regulations of a *minor character* relating to a particular business which are unknown to one party, who is justified in assuming special knowledge by the other party of the requirements of the law."

(a) "Where there are facts of which one party is justifiably ignorant and the other party is not."

There were no such "facts" either averred or proved or indeed even argued except by asking three questions in the next paragraph but one and rhetoric is not proof. There are obvious answers to these questions.

Q. How would plaintiff ascertain what allotment was authorized Proctor?

A. By asking. That he knew enough to put him on notice is clear from his own testimony 140a, 142b excerpts from [fol. 297] which are printed pp. 35, 36 of Appellant's Reply Brief and there was a duty to ask before "accepting" the extraordinary "promise" of 76,000 sole plates per quarter.

Q. How would he learn whether or not Proctor had applied for its allotment?

A. By asking, *fo* course. Either it would have been uncalled for as the equivalent of "Are you breaking the law or there was a duty to ascertain the allocations. So the

hypothesized "ignorance" could not have been "justifiable."

Q. Could plaintiff be held responsible for knowledge of defendant's 1940 production?

A. No one is trying to hold him responsible. That production is irrelevant except as a partial guide to the War Productions Board in making up the allocations. *The directives and allocations* were controlling, and readily ascertained.

Defendant's Point No. 11 (R. 248a) was affirmed by the Court below:

> "Point No. 11—a contract in violation of law or with the purpose or effect of enabling the violation of law is illegal and unenforcible. The test is as to the legality at the time of the entering into of the alleged contract. On November 10, 1944, the date of the alleged agreement in suit, the nation was at war. The production of articles including irons containing essential materials was controlled. The extent of the manufacture of irons was limited. It was illegal to manufacture irons except to the extent permitted by orders issued by the War Production Board. Neither the Plaintiff nor Defendant could engage in the production of irons except as permitted by law. Neither the Plaintiff nor Defendant had lawful authority on November 10, 1944, or any time during the first nine months of 1945 to manufacture a thousand or 750 irons per day, six or five days a week. If you find that no such lawful authority existed, the alleged contract in its entirety was illegal and unenforceable and your verdict must be for the Defendant. That point is affirmed and an exception granted to the Plaintiff." (R. 249a)

The facts stated in that Point are true and correct, are not questioned or modified by any facts in the opinion [fol. 298] below or in the evidence or in the appellee's brief. Those facts call for binding instructions for defendant appellant here.

While the motion is directed primarily to the federal question invol-ed, your Honorable Court in view of the way

in which the three questions involved are inter-wined may well prefer to grant a general reargument.

Wherefore, your petitioner respectfully prays that this Honorable Court grant a reargument in this appeal.

(S.) Thomas Raeburn White, Ira Jewell Williams,
Attorneys for Appellant.

[fol. 299] COMMONWEALTH OF PENNSYLVANIA,
City and County of Philadelphia, ss:

Ira Jewell Williams, being duly sworn according to law, deposes and says that he is one of the attorneys for the Appellant, and that the foregoing petition for reargument and statements made therein are all presented in good faith and that the said petition is not filed for the purpose of delay.

(S.) Ira Jewell Williams.

Sworn to and subscribed before me this 30th day of March A. D., 1954.

(S.) Pearl H. Lovering, 1900 Land Title Bldg, Phila. 10.
Notary Public. My Commission Expires January 29, 1955.

[fol. 300] Endorsement: In the Supreme Court of Pennsylvania, Eastern District, January Term, 1953, No. 257. Maslo Manufacturing Corporation (a corporation) Appellee v. Proctor Electric Corporation (a corporation) Appellant—4-12-54 Petition Denied. Per Curiam—Petition for Reargument—filed in Supreme Court Mar. 30, 1954 Philadelphia. White, Williams & Scott, Land Title Building Philadelphia 10.

[fol. 301] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT, JANUARY TERM, 1953

No. 257

MASLO MANUFACTURING CORPORATION (a corporation)
Appellee

vs.

PROCTOR ELECTRIC CORPORATION (a corporation)
Appellant

ORDER

And now, to wit, this twelfth day of April, 1954, on consideration of the within petition and upon motion of Thomas Raeburn White, Esq., and Ira Jewell Williams, Esq., attorneys for the petitioner, it is ordered that the return of the record in the above captioned case be stayed until the decision of the Supreme Court of the United States on the petition for a writ of certiorari to be filed by petitioner.

Per Curiam.

[fol. 302] IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT, JANUARY TERM, 1953

No. 257

MASLO MANUFACTURING CORPORATION (a corporation)
Appellee

vs.

PROCTOR ELECTRIC CORPORATION (a corporation)
Appellant

PETITION FOR STAY

To the Honorable the Justices of the said Court:

The Petition of Proctor Electric Corporation, Appellant in the above case, respectfully shows:

1. On April 5, 1952 a verdict in favor of Maslo Manufacturing Corporation and against Proctor Electric Cor-

poration for $10,000 was entered in the Court of Common Pleas No. 3, March Term, 1950, #4230, and judgment thereon was entered on June 3, 1953.

2. On June 12, 1953 an appeal bond in the sum of $20,000 with the Indemnity Insurance Company of North America as surety was duly filed in the court below and an appeal taken to this court.

3. The judgment below was affirmed per curiam on March 22, 1954.

[fol. 303] 4. On March 31, 1954 Appellant filed a petition for reargument which petition has been denied by your Honorable Court.

5. Your petitioner is now preparing and will duly submit to the Supreme Court of the United States a petition for a writ of certiorari to issue to your Honorable Court to review the federal question involved.

WHEREFORE, your petitioner respectfully prays your Honorable Court to grant an order staying the return of the record in the above captioned case until the decision of the Supreme Court of the United States on the petition for a writ of certiorari.

(S.) Thomas Raeburn White, Ira Jewell Williams, Attorneys for Petitioner.

[fol. 303a] COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Ira Jewell Williams, being duly sworn according to law, deposes and says that he is of counsel in the above case and that the foregoing petition is not filed for purpose of delay.

(S.) Ira Jewell Williams.

Sworn to and subscribed before me this 12th day of April, 1954.

(S.) Pearl H. Lovering, Notary Public. My Commission expires January 29, 1955. [Seal.]

Endorsement: In the Supreme Court of Pennsylvania, Eastern District, January Term, 1953, No. 257—Maslo Manufacturing Corporation, (a corporation) Appellee vs.

Proctor Electric Corp. (a corporation) Appellant—Order and Petition for Stay—Order within. Thomas Raeburn White, Ira Jewell Williams, White, Williams & Scott, Land Title Building, Philadelphia 10. Filed in Supreme Court April 12, 1954, Philadelphia.

[fol. 304] In the Supreme Court of Pennsylvania, Eastern District, January Term, 1953

No. 257

Maslo Manufacturing Corporation

v.

Proctor Electric Corporation

Praecipe for Certification of Record

To the Prothonotary of the Supreme Court of Pennsylvania:

Please certify the following:

1. The printed record of proceedings in the Court of Common Pleas No. 3 of Philadelphia County.
2. Docket entries in the Supreme Court of Pennsylvania.
3. The opinion of the Supreme Court of Pennsylvania affirming the trial court's judgment.
4. Petition to stay the return of the record and order thereon.
5. Petition for reargument in the Supreme Court of Pennsylvania and order thereon.

(S.) Ira Jewell Williams, Counsel for Proctor Elec*tion* Corporation.

Endorsement: In the Supreme Court of Pennsylvania, Eastern District, January Term, 1953. No. 257. Maslo Manufacturing Corporation v. Proctor Electric Corporation. Praecipe for Certification of Record. Filed in Supreme Court Jun. 4, 1954, Philadelphia. Ira Jewell Williams, White, Williams & Scott, Land Title Building, Philadelphia 10.

[fol. 305] CERTIFICATION OF RECORD

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

I, Charles H. McKibben, Prothonotary of the Supreme Court of Pennsylvania, for the Eastern District thereof, do hereby certify that the foregoing Record, pages 1 to 306, inclusive, is a true and faithful copy of the Record and Proceedings of the Supreme Court of Pennsylvania, in the Eastern District aforesaid, in a certain suit therein pending, wherein Proctor Electric Company, appellant and Maslo Manufacturing Company, appellee.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the said The Supreme Court of Pennsylvania, in and for the Eastern District, at Philadelphia, this seventh day of June in the year of our Lord one thousand nine hundred and fifty-four.

Charles H. McKibben, Prothonotary.

[fol. 306] I, Horace Stern, Chief Justice of the Supreme Court of Pennsylvania, do hereby certify, that Charles H. McKibben was, at the time of signing the annexed attestation, and now is, Prothonotary of the said Supreme Court of Pennsylvania, in and for the Eastern District, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 7th day of June one thousand nine hundred and fifty-four.

Horace Stern, Chief Justice of Pennsylvania.

I, Charles H. McKibben, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do certify, that the Honorable Horace Stern by whom the foregoing Certificate was made and given, was, at the time of making and giving the same and is now Chief Justice of the Supreme Court of Pennsylvania; to whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and

affixed the Seal of the said Supreme Court of Pennsylvania, in and for the Eastern District, at Philadelphia, this 7th day of June one thousand nine hundred and fifty-four.

Charles H. McKibben, Prothonotary of the Supreme Court of Pennsylvania, Eastern District. (Seal.)

(5555)

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BRIEF IN OPPOSITION TO PETITION

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

No Federal question is involved.

Petitioners admit that the law of the forum governs (page 24 of petitioner's brief).

The defense of illegality is described in Judge Alessandroni's opinion (page 266a of the record before the Supreme Court of Pennsylvania):

> "We turn now to the last question, that of the illegality of the contract. The defendant argues that the contract was illegal when made and hence there can be no recovery. The argument is that Proctor could not legally make such a contract because it lacked authority under the Second War Powers Act, 50 U. S. C. A. 633, to make electric flat irons. Defendant states that not until January 20, 1945 was it authorized to make any irons at all. The instant contract was to start January 15, 1945. The burden of establishing an illegal contract was on defendant. H. Daroff & Sons, Inc. v. Vitullo, et al., 350 Pa. 501.
>
> The fatal defect in this argument is that on August 19, 1944 the War Production Board issued regulation L-65-a, which authorized a limited resumption of the manufacture of flat irons.
>
> Furthermore, by directive CMPL-150b of the War Production Board issued June 7, 1944, Proctor was authorized to manufacture 34,450 irons during the last quarter of 1944. It is therefore obvious that the argument that Proctor was not authorized to make *any* irons prior to January 20, 1945 is just not a fact.
>
> The cases cited by defendant on the illegality issue deal with contracts which were in violation of statutes or regulations when made. It is unquestionable that

a contract, illegal when made, cannot be made legal by subsequent acts of the parties or by legislative or regulatory action. That question is absent from this case.

This contract was legal when made. A further distinction, in view of the regulations, is that it was a service contract, not a manufacturing contract. If as defendant alleges the contract was illegal when made, then it was not obliged to pay for any of the work performed. Furthermore, its own actions during this period indicated no awareness on its part of any illegality. The action referred to is the obtaining of plates from a foundry in a number far in excess of the number hindsight indicates was finally authorized.

Even if this contract were illegal we think plaintiff could recover thereon. Plaintiff could base a recovery on either (a) or (b) of Section 599 of the Restatement of Contracts; (a) allows recovery where there are facts of which one party is justifiably ignorant and the other party is not, or (b) statutory or executive regulations of a minor character relating to a particular business which are unknown to one party, who is justified in assuming special knowledge by the other party of the requirements of the law.

Defendant rightly argues that one may not assume that the Second War Powers Act was a statute of minor character nor were the regulations thereunder. However, the proper view of this situation must be cast against the era in which it transpired. Plaintiff is charged with notice. But cannot the court take judicial notice of the thousands of orders and regulations issued during the war years? The record itself and defendant's exhibits indicate the difficulties of keeping abreast of the conflicting orders and directives of the W. P. B.

How would plaintiff ascertain what allotment was authorized Proctor? How would he learn whether

or not Proctor had applied for its allotment? Could plaintiff be held responsible for knowledge of defendant's 1940 production? It is obvious that casting the issue in this context and against the above background, plaintiff was either justifiably ignorant of the exact facts or he was justified in relying on defendant's implicit representation that it had authority to make the irons contracted for. Against these circumstances and keeping in view the tremendous volume of government orders, directives and regulations, a regulation dealing with the manufacturing of the lowly household flat iron could well be considered minor.

Therefore on either of the above bases, plaintiff is entitled to recovery. Cf. Sauer v. McKees Rocks School District, 243 Pa. 294."

It would make the second quoted paragraph more clear if we made a more detailed review of regulation L-65-a which is contained on page 3a of the Appendix to the Petition for Writ of Certiorari. That regulation was made (1) on August 19, 1944, (2) that order provided for the resumption of the manufacture of electric irons. (3) Paragraph 3 provided that if a manufacturer of electric irons was authorized to make his pro rata share of the total production authorized based on his production during 1940. "To insure full production of the approved requirements the War Production Board may assign additional quotas to qualified manufacturers.

Paragraph (e) entitled distribution provides that there should be "equitable distribution to meet essential needs." And in paragraph (4) where a manufacturer of electric irons in 1940 was unable to produce because of interference with war work, the War Production Board could authorize another to make irons for them.

The contract was not illegal, nor known to be illegal by the respondent.

The rule of the RESTATEMENT, Contracts, Section 599 at page 1111 is:

> "Where the illegality of a bargain is due to
> (a) facts of which one party is justifiably ignorant and the other party is not, or
> (b) statutory or executive regulations of a minor character relating to a particular business which are unknown to one party, who is justified in assuming special knowledge by the other party of the requirements of the law,

the illegality does not preclude recovery by the ignorant party of compensation for any performance rendered while he is still justifiably ignorant or for losses incurred or gains prevented by non-performance of the bargain."

In the illustration of Clause (b), *Restatement*, Contracts, at page 1114, the following commentary is made:

> "A, a builder, enters into a bargain with B to build a house according to certain plans and specifications. The plans and specifications involve some violations of building laws, and cannot be rectified without increased expense. B is not engaged in real estate operations, and is ignorant of the requirements of building laws. A, discovering the violations of the building laws, refuses to build unless the plans and specifications are rectified, and an agreement made by B to pay additional compensation. B can recover damages. He is justified in assuming A's knowledge of the requirements of the building laws."

The Rule of the Restatement is the law of Pennsylvania. In *Sauer v. McKees Rocks School District*, 243 Pa. 294, the

School District had entered into an agreement with an architect for the preparation of plans and specifications for a school building. Later a contract was given for the construction in accordance with these plans and specifications. The court held that the contractor with the builder was illegal because the price to be paid the builder exceeded the debt limit of the School District. The architect sued for the contract price for the plans and specifications, and the defense was the illegality of the contract. The Supreme Court held that since the architect did not know of the illegality, he was entitled to recover, holding (page 302):

> "It cannot be pretended under the evidence in the case that the plaintiff even suspected that the Kreusler contract was invalid; on the contrary, he had the right to assume and did assume that having a valid contract with it for his services, the board was not exceeding its powers in the construction of the building. Under these circumstances, therefore, the plaintiff could recover although the Board intended when his contract was executed to create a debt exceeding the constitutional limit in the erection of the building. Where an agreement is lawful on its face or is capable of being executed in a lawful way, and the intention of one of the parties is that it be so executed, he is entitled to enforce it notwithstanding the other party intended an illegal act, if he was unaware of the illegal intention. 9 Cyc. 570."

Certainly under the foregoing rules there was nothing illegal *so far as Maslo is concerned*. The illegality, if any, resulted from facts as to which Maslo was justifiably ignorant and certainly as to a particular business which was known to Proctor and not to Maslo. Therefore as to either (a) or (b) of these rules there was no illegality as to Maslo.

The oddity of this defense of illegality is that nobody could know with absolute certainty on November 10, 1944 how much Proctor could or could not produce in 1945, or one year after the termination of hostilities. Mr. Lawson testified (214a):

> "Question: Under the language of that letter, or order, or whatever it is, could the Proctor Electric Company proceed with absolute certainty in the first quarter of 1945, that they could manufacture 4,374 electric irons? Could they proceed with certainty that there would be no further order coming from the government?
>
> Answer: No, they could not."

If Proctor did not make the applications for additional allotments it could have made, how can it be asserted that there was illegality in the contract with Maslo? Mr. Lawson was questioned as to this (224a):

> "Question: Mr. Lawson, referring to Paragraph 4 of the order of August 19, 1944, did you ever make application to the War Production Board under Form WBB-3551 for permission to have another person make irons for them?
>
> Answer: Was that August 19, 1944?
>
> Question: Yes.
>
> Answer: I was not with Proctor Electric Company at that time."

(All of foregoing quotations referred to page numbers in the record of the Supreme Court of Pennsylvania.)

The presumption is that the contract is lawful.

In *Block v. Mylish*, 351 Pa. 611, 41 A. 2d at page 735, the opinion by Mr. Justice Jones held:

> "* * * In interpreting a contract, a construction which would effect an unreasonable or unlawful end is to be avoided. See Williston on Contracts, Vol. 3 (Rev. Ed.), §620, p. 1785, et seq.; Restatement, Contracts, Vol. 1, §236, p. 327."

Another cardinal rule of construction is that set forth in *Corbin on Contracts*, Vol. 6, p. 1054, Section 1533:

> "If the bargain is one that is capable of being performed lawfully, the court will not assume a purpose to perform it in an unlawful manner; proof of such a purpose would have to be made."

Corbin on Contracts, Vol. 6, Section 1518 entitled "Unlawful Purpose" also states:

> "Of course the court will not assume the existence of such purpose; it must be alleged and proved by the party attacking the validity of the contract."

It is, therefore, respectfully submitted that (a) no Federal question is involved; (b) the law of the forum determines if there is any illegality; (c) the contract was not illegal; (d) certainly Maslo did not ever know it was illegal and under the rule of the Restatement, Maslo was justified in believing that it was legal; and (e), the contract was capable of being performed lawfully. Therefore, the petition for Writ of Certiorari should be denied.

HARRY FISCHER,
EDWIN FISCHER,
BERTRAM BENNETT,
Attorneys for Respondent.